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July 19, 2005

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Hand Delivered

CHIEF OF
NEIL H. SHUSTER, J.S.C.

Hon. Neil H. Shuster, P.J. Ch. Div.
Superior Court of New Jersey, Chancery Division
210 S. Broad Street, 5th Floor
Trenton, New Jersey 08650-0068

Re: I/M/O the Rehabilitation of MIIX Insurance Company
Docket No. MER-C-86-04

Dear Judge Shuster:

Please accept this letter memorandum in support of the Order To Show Cause filed by the Acting Commissioner of Banking and Insurance as Rehabilitator of MIIX Insurance Company ("the Rehabilitator") seeking Court approval of the plan to make settlement payments to certain claimants against MIIX insureds. A certification by Richard L. White, Deputy Rehabilitator of MIIX Insurance is also enclosed. We are providing members of the informal advisory committee with courtesy copies of the documents that we are submitting to the Court today. The enclosed Order to Show Cause provides for other forms of notice to interested parties, including by publication. Additionally, after the Order is signed, the Department of Banking and Insurance will post the Order to Show Cause and the supporting letter brief and certification on the Department's internet website. We recently advised all claimants by letter that the filing would be posted on the Department's website.

As the Court is aware, the Rehabilitator determined that MIIX Insurance does not have sufficient assets to pay all of its existing claims and estimated future claims which will arise in the normal course of business. The Rehabilitator had determined that MIIX Insurance had a negative surplus of approximately \$306,207,000



as of October 31, 2004, with assets of approximately \$542,565,000, and liabilities of approximately \$848,000,000.

In January, the Rehabilitator crafted and presented to the Court a plan for keeping MIIX out of liquidation. The plan involved a large scale effort to settle approximately 800 claims pending against MIIX insureds. In the January application, the Rehabilitator requested, and the Court entered, an order staying the commencement of trials against MIIX insureds through July 25. The purpose of the stay was to allow the Rehabilitator time to implement the settlement plan.

As the Deputy Rehabilitator explains in more detail in his certification, the settlement plan has succeeded. On May 2, 2005, the company mailed settlement offers to 708 claimants. As of June 27, 2005, 82% of the offers were accepted (544/708). The Deputy Rehabilitator and his staff analyzed the response to the settlement plan and have advised Acting Commissioner Donald Bryan that the response was sufficient to allow the rehabilitation to continue. (White Certif., ¶5). Since an adequate number of claimants and insureds agreed to settlement and resolution of these cases, MIIX Insurance will be left with enough assets to run off the remaining liabilities of the company.

The Rehabilitator requests that the Court enter an order permitting MIIX Insurance to make payments to the 544 claimants who agreed to settle their cases under the plan. The total to be paid to all claimants who agreed to settle is \$185,600,000. (White Certif., ¶9). If the plan is approved, MIIX will have approximately \$189 million in assets, an amount the Deputy Rehabilitator believes is sufficient to finance the costs of defending the remaining reported claims, unreported future claims, and the on-going costs of administering the rehabilitation.

It is the Commissioner's duty as Rehabilitator to manage MIIX Insurance and to submit a rehabilitation plan, subject to Court approval, that is fair and equitable to all concerned parties. See LaVecchia v. HIP of N.J., Inc., 324 N.J. Super. 85, 91 (Ch. Div. 1999). The Commissioner is given broad discretion in his conduct of delinquency proceedings under the Uniform Insurers Liquidation Act ("UILA"), N.J.S.A. 17:30C-1 et seq. Ibid. The Commissioner is entitled to deference with respect to his decisions in conducting a rehabilitation, and such decisions cannot be overturned unless shown to be arbitrary or unreasonable. Ibid.; see also Fortunato v. N.J. Life Ins. Co., 254 N.J. Super. 420, 426-27 (App. Div. 1991).

The Court supervising rehabilitation also has broad equitable powers under the UILA, which provides that the Court may grant:

such . . . relief as the nature of the case and the interests of the policyholder, creditors, stockholders, members, subscribers or the public may require. N.J.S.A. 17:30C-4d.

In Matter of Integrity Ins. Co., 240 N.J. Super. 480, 491, (App. Div. 1990), the court explained that the supervising court is statutorily required to exercise a wide range of discretion to protect the interests of policyholders, creditors and the public.

Here, as outlined in paragraph 14 of the Deputy Rehabilitator's certification, the settlement plan provides several benefits to claimants, insureds, the courts, and the general public.

- a. the plan leaves MIIX Insurance with sufficient funds to have a solvent run-off of its remaining liabilities;
- b. the plan represents the best possible chance of providing a prompt, fair and equitable distribution of the company's limited assets to those claimants who were injured and have suffered a compensable claim;
- c. it assures that meritorious claims will be compensated at an amount proportionate to the historical average value of similar claims paid in the past by MIIX Insurance; the 82% acceptance rate as of June 27 demonstrates that claimants viewed the offers as fair and equitable;
- d. the plan avoids involving the state Guaranty Funds with their attendant liability limits and the significant expense of involving the Guaranty Funds, which is ultimately passed on to the public in the form of insurance premium surcharges;
- e. the plan will protect settling policyholders from the possibility of claimants obtaining deficiency judgments above the \$300,000 Guaranty Fund cap or their policy limits and seeking to satisfy such judgments out of the personal or corporate assets of policyholders;

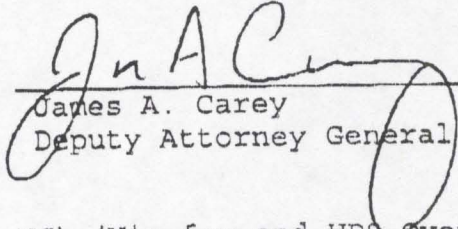
f. the settlement plan will remove a significant number of cases from the judicial system with only a minimal disruption.

The Rehabilitator has crafted a plan which provides the best opportunity for all parties interested in the outcome of MIIX to be treated equitably. For all of the foregoing reasons, the Rehabilitator respectfully requests that the Court enter an order permitting the Rehabilitator to make payments totaling \$185,600,000 to the claimants who accepted settlement offers.

Respectfully submitted,

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: _____


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